

AMENDED IN ASSEMBLY AUGUST 10, 2000

AMENDED IN ASSEMBLY AUGUST 16, 1999

AMENDED IN SENATE APRIL 21, 1999

SENATE BILL

No. 353

Introduced by Senator Johannessen
(Coauthors: Senators Bowen, McPherson, and Morrow)
(Coauthors: Assembly Members Bates, Leach, Longville,
Margett, Oller, Pescetti, and Zettel)

February 10, 1999

An act to add ~~Section 14132.18 to~~ *Article 4.6 (commencing with Section 14146) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code*, relating to health, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 353, as amended, Johannessen. Medi-Cal: residential care facility services.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services.

~~Under existing law, one of the benefits covered under the Medi-Cal program is for services provided in long-term health care facilities.~~

This bill would require the department to ~~submit a waiver request to the federal government to obtain coverage under the Medi-Cal program of services provided in residential care facilities~~ *develop a demonstration project to test the efficacy*

of providing an assisted living benefit to eligible low-income beneficiaries under the Medi-Cal program, to the extent of federal financial participation.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of~~
2 *SECTION 1. The Legislature finds and declares all of*
3 *the following:*

4 *(a) Consumer demands that long-term care services*
5 *be designed to match individual needs, maximize*
6 *independence, and prevent institutionalization are*
7 *causing changes in the long-term care industry. The*
8 *reimbursement scheme continues to be focused on*
9 *hospitals and institutions, despite the rise in home-based*
10 *services and widespread need for noninstitutional*
11 *services.*

12 *(b) Medi-Cal reimburses skilled nursing facilities at*
13 *the rate of \$2,500 per month. Residential care facilities for*
14 *the elderly on average cost between \$1,000 and \$1,800 per*
15 *month. Seventy percent of seniors in skilled nursing*
16 *facilities are funded by the Medi-Cal program. The*
17 *California Little Hoover Commission has estimated that*
18 *at least 30 percent of seniors in skilled nursing facilities*
19 *could be cared for in residential care facilities for the*
20 *elderly. California needlessly spends millions of Medi-Cal*
21 *dollars by funding the most expensive care option for*
22 *these seniors when more affordable, less institutional care*
23 *options exist.*

24 *(c) California currently does not determine if the*
25 *approximately 8,000 In-Home Supportive Services*
26 *(IHSS) recipients who transfer each year from home to*
27 *skilled nursing facilities could be in residential care*
28 *facilities for the elderly.*

29 *(d) California currently does not determine how*
30 *many low-income seniors who need care transfer from*

1 residential care facilities for the elderly into skilled
2 nursing facilities because of insufficient funds. In
3 developing their medicaid waiver, Florida found each
4 year that 3,000 seniors were forced to leave residential
5 care facilities for the elderly and go to skilled nursing
6 facilities because of this reason.

7 (e) California is unable to apply for grants offered by
8 the federal Health Care Financing Administration, most
9 recently \$500,000, by the May 1999 deadline, to develop
10 a process to transfer residents from skilled nursing
11 facilities into residential care facilities for the elderly
12 because there is no medicaid mechanism in place to pay
13 for residential care facilities for the elderly.

14 (f) The federal Health Care Financing Administration
15 actively encourages states to apply for medicaid waivers
16 and recognizes many individuals at risk of
17 institutionalization can be cared for in assisted living
18 homes, maximizing their independence and quality of life
19 at a cost no higher than institutionalization.

20 (g) The 1998 State Assisted Living Policy report by
21 Robert Mollica prepared for the National Academy of
22 State Health Policy details which states currently have a
23 medicaid waiver. California is one of the few states in the
24 nation which does not permit its medicaid program to
25 reimburse residential care facilities for the elderly.
26 Currently, 40 states allow medicaid to pay for services
27 provided in assisted living homes. States that adopt the
28 waiver find that medicaid waivers allow them to serve
29 more seniors with the same medicaid dollars.

30 (h) States with medicaid waivers for assisted living
31 homes most often allow seniors eligible for the nursing
32 home criteria to use cash benefits received under the
33 federal Supplemental Security Income program to pay
34 for the room and board costs while medicaid pays for the
35 assisted living services.

36 SEC. 2. Article 4.6 (commencing with Section 14146)
37 is added to Chapter 7 of Part 3 of Division 9 of the Welfare
38 and Institutions Code, to read:

39

1 Article 4.6. *Assisted Living Demonstration Project*

2
3 14146. *The following definitions shall govern the*
4 *construction of this article, unless the context requires*
5 *otherwise:*

6 (a) *“Department” means the State Department of*
7 *Health Services.*

8 (b) *“Residential care facility for the elderly” or*
9 *“RCFE” means a facility as defined in subdivision (k) of*
10 *Section 1569.2 of the Health and Safety Code.*

11 (c) *“Skilled nursing facility” or “SNF” means a facility*
12 *as defined in subdivision (c) of Section 1250 of the Health*
13 *and Safety Code.*

14 14146.1. (a) *The department shall develop a*
15 *demonstration project to test the efficacy of providing an*
16 *assisted living benefit to low-income beneficiaries under*
17 *the Medi-Cal program. The department shall submit any*
18 *necessary waiver applications or modifications to the*
19 *medicaid state plan to the Health Care Financing*
20 *Administration to implement the demonstration project,*
21 *and shall implement the project only to the extent federal*
22 *financial participation is available.*

23 (b) *The assisted living benefit shall be designed to*
24 *provide eligible individuals with a range of services that*
25 *enable them to remain in the least restrictive and most*
26 *homelike environment while receiving the medical and*
27 *personal care necessary to protect their health and*
28 *well-being.*

29 14146.2. *Individuals who are determined by the*
30 *department to be eligible for, or at risk of, placement in*
31 *a nursing facility or seniors currently residing in a SNF*
32 *shall be eligible for participation in the demonstration*
33 *project, based on an assessment of an individual’s ability*
34 *to perform functional and instrumental activities of daily*
35 *living, as well as the individual’s medical diagnosis and*
36 *prognosis.*

37 14146.3. *An eligible individual may participate in the*
38 *demonstration project only if he or she is fully informed*
39 *of the project and the nature of the benefit and indicates*
40 *in writing his or her choice to participate.*

1 14146.4. (a) The department shall develop the
2 demonstration project in conjunction with primary
3 stakeholders, consumers, consumer advocates, housing
4 and service providers, and experts in the fields of
5 gerontology, geriatric health, nursing services, and
6 independent living.

7 (b) To determine potential long-term savings to the
8 state, the demonstration project shall also consist of the
9 department annually sampling a statistically relevant
10 number of seniors on Medi-Cal currently residing in SNFs
11 and seniors previously receiving in-home supportive
12 services under Article 7 (commencing with Section
13 12300) of Chapter 3 who have transitioned to SNFs to
14 determine suitability for placement in RCEFs.

15 (c) (1) The department shall evaluate the
16 effectiveness of the demonstration project.

17 (2) The evaluation shall include, but not be limited to,
18 participant satisfaction and a comparison of the
19 cost-effectiveness of the demonstration project with
20 current state programs that provide services to
21 low-income elderly and disabled persons.

22 (3) The evaluation shall estimate the projected
23 savings, if any, in the budgets of state and local
24 governments if the program was expanded statewide.

25 (4) The evaluation shall be submitted to the
26 appropriate policy and fiscal committees of the
27 Legislature on or before January 1, 2002.

28 14146.5. (a) The number of individuals, facilities, and
29 agencies participating in the demonstration project shall
30 be limited in accordance with any requirements of the
31 federal Health Care Financing Administration.

32 (b) The department shall limit the number of
33 participants in the demonstration project during the
34 initial three years of its operation to a number that will be
35 statistically significant for purposes of the program
36 evaluation and that meets any requirements of the
37 federal Health Care Financing Administration.

38 (c) The aggregate costs of benefits under the
39 demonstration project shall not exceed the average

1 *monthly rate for the placement of waiver participants in*
2 *a skilled nursing facility.*

3 *the following:*

4 (a) ~~The number of residential care facilities for the~~
5 ~~elderly in this state has grown rapidly in recent years.~~

6 (b) ~~Health care service plans and insurance providers~~
7 ~~are more frequently contracting with community-based~~
8 ~~institutions, such as nursing facilities, to provide services~~
9 ~~that were previously provided primarily by general acute~~
10 ~~care hospitals.~~

11 (c) ~~Consumer demands that long term care services~~
12 ~~be designed to match individual needs, maximize~~
13 ~~independence, and prevent institutionalization are~~
14 ~~causing changes in the long-term care industry.~~

15 (d) ~~The long term care service delivery system has~~
16 ~~been changing due to consumer demands that the~~
17 ~~industry coordinate its care, optimize community-based~~
18 ~~options, and make available a choice of service and~~
19 ~~service delivery options, thereby enabling existing family~~
20 ~~and community-based systems of care to function most~~
21 ~~effectively.~~

22 (e) ~~Current state licensing categories do not provide~~
23 ~~for the continuum of service delivery settings that best~~
24 ~~allows the consumer to maximize his or her~~
25 ~~independence.~~

26 (f) ~~The categorical approach to funding elder health~~
27 ~~care services is driven by antiquated reimbursement~~
28 ~~mechanisms, licensing laws, and regulations. The~~
29 ~~reimbursement scheme continues to be hospital and~~
30 ~~institutional focused, despite the rise in home-based~~
31 ~~services and widespread need for noninstitutional~~
32 ~~services.~~

33 (g) ~~Oregon, Washington, and Wisconsin have~~
34 ~~successfully expanded home and community-based care~~
35 ~~to help control increasing health care expenditures.~~
36 ~~These states have been able to provide services to more~~
37 ~~people using their available funds. Furthermore, 35 states~~
38 ~~are currently using or planning to use similar models. Six~~
39 ~~states are currently studying the issue.~~

~~(h) States that have adopted the federal waiver program provided for pursuant to subsection (c) of Section 1915 of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)), have found that many nursing home residents have only custodial care needs, for example, help with bathing and dressing, and help to the bathroom. Furthermore, states that have implemented the waiver are now able to provide services to more people with their available funds.~~

~~SEC. 2. It is the intent of the Legislature to do all of the following:~~

~~(a) Ensure that the elderly residents of this state are properly cared for and that they have access to adequate services, health facilities, and safety.~~

~~(b) Design a long-term care system that will provide the elderly with the choice as to where they want to live and receive care.~~

~~(c) Address the rapidly changing long-term care delivery system and setting.~~

~~(d) Act as a bridge to future changes in the administration of services to the elderly by maintaining momentum for the development of a more fluid and seamless long-term care delivery system and a system of institutions.~~

~~(e) Facilitate the integration of licensure of long-term care facilities by providing the encouragement to seek out new systems of facility licensure.~~

~~SEC. 3. Section 14132.18 is added to the Welfare and Institutions Code, to read:~~

~~14132.18. (a) In order to provide for coverage under this chapter for services provided in residential care facilities, the department shall apply to the federal government for a waiver under subsection (c) of Section 1915 of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)). The waiver proposal shall include a commencement date of not later than September 15, 2000.~~

~~(b) If the waiver sought pursuant to subdivision (a) is obtained, the California Health and Human Services Agency, in coordination with the California Department~~

1 of Aging, the department, the State Department of Social
2 Services, the State Department of Mental Health, and the
3 State Department of Developmental Services, shall
4 coordinate efforts to ensure the successful
5 implementation of the waiver program.

6 ~~SEC. 4. This act is an urgency statute necessary for the~~
7 ~~immediate preservation of the public peace, health, or~~
8 ~~safety within the meaning of Article IV of the~~
9 ~~Constitution and shall go into immediate effect. The facts~~
10 ~~constituting the necessity are:~~

11 ~~In order to enable certain Medi-Cal recipients to have~~
12 ~~a better quality of life and, at the same time, to realize a~~
13 ~~savings in General Fund revenues, at the earliest possible~~
14 ~~time, it is necessary that this act go into immediate effect.~~

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